

REMARKS

Claims 9 to 15, 17 and 19 to 29 are pending in the application; Claims 9 to 15, 17 and 19 to 29 stand rejected. By this Amendment Claims 9 to 15 have been cancelled and Claims 17 and 25 have been amended. These amendments add no new matter to the application.

In the Final Action, under the heading "Response to Arguments" the Examiner has indicated the Applicant's previous arguments filed 2/12/2007 were not found persuasive. Applicant argued that all of the elements of the claimed invention were not fully considered. Specifically the claim element is, "the therapeutic amount of the catechin selected for efficacy in treating amyloid, alpha-synuclein or NAC fibrillogenesis in a mammalian subject" In support of maintaining the rejection and with reference to the claim element, the Examiner states that the preamble of a claim is not accorded patentable weight where it merely recites a purpose or intended use. Applicant notes that the claim element has perhaps been mischaracterized as being part of the preamble. In actual fact, the claim element, i.e "the therapeutic amount of the catechin selected for efficacy in treating amyloid, alpha-synuclein or NAC fibrillogenesis in a mammalian subject" follows the transitional term "consisting of" and is therefore part of the body of the claim and not a part of the preamble. Furthermore, Applicant hereby incorporates by reference as if fully set forth herein, the arguments they have already advanced in earlier responses to rejections made by the Examiner.

I. REJECTION OF CLAIMS 9-15 UNDER 35 U.S.C. §102(b), OVER KUZNICKI ET AL.

Claims 9-15 are rejected under 35 USC 102(b) as allegedly anticipated by Kuznicki. Claims 9-15 are cancelled.

II. REJECTION OF CLAIMS 17 and 25 UNDER 35 U.S.C. §102(b), OVER MITUSI NORIN

Claims 17 and 25 are rejected under 35 USC 102(b) as allegedly anticipated by the Mitsui Norin patent because the reference allegedly teaches a pharmaceutical composition containing catechin for diminishing the toxicity in nerve cells caused by β -amyloid protein. As amended herein, Claims 17 and 25 no longer recite “amyloid”. As all of the claim elements are not taught by the reference, it is respectfully submitted that this ground of rejection has been rendered moot.

III. REJECTION OF CLAIMS 19-24 and 26-29 UNDER 35 U.S.C. §103(a), OVER KUZNICKI *ET AL.* and MITUSI NORIN.

Claims 19-24 and 26-29 are rejected under 35 USC 103(a) as allegedly obvious in view of Mitsui, and further in view of Kuznicki. Dependent Claims 19-24 and 26-29, depend respectively from claims 17 and 25. As amended herein, Claims 17 and 25 no longer recite “amyloid”. The rejection is respectfully traversed.

Applicant respectfully submits that neither of the references alone or in combination teach all of the elements of the claimed invention. There is no teaching or suggestion in Mitsui or Kuznicki to alter the compositions taught therein to select for efficacy in treating alpha-synuclein or NAC fibrillogenesis of the instant claims. Nor is any such teaching within the scope of knowledge of those of skill in the art. Thus, the instant claims are not obvious over the teachings of Mitsui or Kuznicki.

IV. REJECTION OF CLAIMS 9-15 and 25-29 UNDER JUDICIALLY CREATED DOCTRINE OF OBVIOUSNESS-TYPE DOUBLE PATENTING.

Applicant submits that once allowable subject matter is indicated, a terminal disclaimer will be timely filed.

In light of the above amendments and remarks, the Applicant respectfully requests that the Examiner reconsider this application with a view towards allowance. The Examiner is invited to call the undersigned if a telephone call could help resolve any remaining issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Rebecca Eagen', with a large, stylized initial 'R'.

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